

BEFORE THE FEDERAL MARITIME COMMISSION

**PETITION OF
BDP INTERNATIONAL, INC.**

**FOR EXEMPTION FROM
THE TARIFF PUBLISHING REQUIREMENTS OF
SECTION 8 OF THE SHIPPING ACT OF 1984, AS AMENDED.**

FMC Petition No. P 2 - 04

RECEIVED
04 JAN 22 P 14:35
FEDERAL MARITIME COMMISSION

January 20, 2004

**Carlos Rodriguez, Esq.
Rodriguez O'Donnell Ross
Fuerst Gonzalez & Williams
1211 Connecticut Ave. N.W.
Suite 800
Washington, D.C. 20036
(202) 973-2999**

**Catherine Muldoon, Esq.
General Counsel for Petitioner**

**BDP International, Inc.
510 Walnut St.
Philadelphia, PA 19106
(215-629-8297)**

Of Counsel for Petitioner

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
A.	OVERVIEW OF BDP.....	3
	1. BDP'S INTEGRATED LOGISTICS/TRANSPORT OPERATIONS.....	3
	2. BDP'S FINANCIAL POSITION.....	6
B.	THE CHANGED OCEAN SHIPPING ENVIRONMENT	8
II.	STATEMENT OF EXEMPTION REQUESTED.....	11
III.	EXEMPTION WILL PROMOTE COMPETITION AND WILL NOT BE DETRIMENTAL TO COMMERCE.....	12
	1. GRANTING OF THE EXEMPTION WILL NOT BE DETRIMENTAL TO COMMERCE.....	12
	2. GRANTING THE EXEMPTION WILL NOT SUBSTANTIALLY REDUCE COMPETITIOIN.....	13
	a) CARRIERS AND CARRIER-OWNED LOGISTICS COMPANIES.....	13
	b) OTHER NVOCCS OFFERING VALUE-ADDED SERVICES.....	15
IV.	OSRA'S LEGISLATIVE HISTORY SUPPORTS THE COMMISSION'S AUTHORITY TO GRANT THE EXEMPTION.....	16
A.	THE CHANGED COMMERCIAL ENVIRONMENT.....	16
B.	THE COMMISSION'S EXEMPTION AUTHORITY.....	19
V.	THE EXEMPTION CRITERIA.....	21
VI.	CONCLUSION.....	21

I. INTRODUCTION

Pursuant to Section 16 of the Shipping Act of 1984, as amended (the “Act”), BDP International Inc., and its wholly-owned subsidiary, BDP Transport, Inc., BDP Transport, LLC, a Federal Maritime Commission licensed Ocean Transportation Intermediary, FMC. No. 1127, (collectively referred to herein as “BDP”), petitions the Federal Maritime Commission (the “FMC” or the “Commission”) to exempt it, at **BDP’s** discretion, **from** the tariff publishing requirements of Section 8 of the Shipping Act of 1984, as amended, (hereinafter the “Shipping Act” or the “Act”), pursuant to Section 16 of the Act. This exemption would provide BDP and its customers discretion to negotiate individually structured, confidential agreements to meet each customer’s particular transportation and logistics requirements. It is the objective of BDP that for those shipments for which BDP chooses to be exempted from the tariff publishing requirements of the Act, BDP and its customer(s) would set forth their shipping agreement(s) in confidential contract format, subject to any conditions, as will be further discussed herein, which the Commission would deem appropriate pursuant to Section 16 of the Act.

It is the objective of this Petition to demonstrate that BDP, as a closely held corporation owned by the Bolte family of Philadelphia for the last thirty-eight (38) years, is a financially stable company that services importers and exporters globally. While BDP services all types of shippers, it is primarily focused, and recognized as a transport and logistics services provider to the global chemical industry. BDP has annual gross revenues of approximately \$1.0 billion. While it does not own fleets of trucks or aircraft, as a logistics/transport company, BDP will clearly demonstrate that it has invested substantial sums in the information technology (“IT”) systems demanded by shippers in

the current transportation/logistics environment. This investment also extends to the corresponding skilled personnel that must be employed by companies such as BDP to work with and implement that technology. BDP has become a leader in this important arena. BDP has no long term debt, and has consistently demonstrated healthy cash flow and working capital ratios.

BDP submits that there have been major industry shifts which have occurred which were not considered when Congress last revisited the shipping laws that resulted in the Ocean Shipping Reform Act (“OSRA”). BDP further submits that the Federal Maritime Commission has the legal authority to grant this Exemption, and that Congress expects the Commission to exercise its discretion since “. the FMC is more capable of examining through the administrative process specific regulatory provisions and practices

to determine where they can be deregulated consistent with the policies of Congress.” S. Rep. No. 105-61 at 30 (1997). BDP will demonstrate through its Petition that it meets all requirements for this Exemption, including the requirements that granting the Petition will not reduce competition, nor be detrimental to commerce.

A. OVERVIEW OF BDP

1. BDP’s Integrated Logistics/Transport Operations. Today, BDP is one of the largest privately owned global logistics companies in the United States. Headquartered in Philadelphia, the company has more than 20 offices across the United States and a network of joint venture associates in over 100 countries worldwide. BDP’s annual gross revenues in 2003 approaches \$1.0 billion, with net revenue of \$83.0 million. 60% of these sales, by revenue, represent services to the chemicals industry. BDP manages the movement and processing of approximately 65% of U.S. chemical exports

(containerized). It coordinates over 300,000 TEU'S, and some 310,000 transactions of chemical shipments annually. In 1997 BDP was awarded The President's E-Award for Excellence in Exporting, the highest U.S. award for American exporters. BDP employs over 1,300 employees worldwide. See Attachment A, Verified Statement of John M. Bolte, Executive Vice President & Chief Operating Officer, at p.1 (hereinafter "Bolte Statement").

BDP Transport, LLC, a wholly owned **affiliate** of BDP International, Inc., is a non-vessel operating common carrier ("NVOCC") and an ocean transportation intermediary ("OTI"), as these terms are defined in the Act'. BDP transports substantial volumes of freight that move via all modes of transportation, including those by vessel-operating common carriers ("VOCCs"). A substantial amount of this ocean cargo is moved, handled and integrated in connection with **BDP's** other transportation activities and modes-i.e., air and surface, intermodal, IT services, warehousing, and logistics, among others. See Attachment 1, Bolte Statement, p. 2.

BDP provides a full range of supply chain management solutions and services for more than 4,000 customers worldwide. These shippers depend on BDP for transportation services in all modes of transportation as well as for intermodal and full-service global supply chain management solutions. BDP assists shippers to solve their supply chain problems, and to develop and implement distribution strategies that help shippers meet their short and long-term goals. BDP provides value-added services that supplement shippers' supply chain management plans. These value-added transportation management services include **BDP's** Logistics Process Analysis. This is an executive resource, which

helps global shippers analyze, develop and implement successful logistics management strategies. See Attachment 1, Bolte Statement, p. 2.

BDP's portfolio of integrated services for warehousing and distribution solutions for its customers is yet another value added service which it offers both its U.S. and international clients. BDP operates many warehouses on behalf of its global partners. Throughout its U.S. based and global operations, BDP continually helps clients identify reductions in redistribution costs, transportation and handling fees. BDP's completely integrated approach of its ECHO inventory management system provides control on a worldwide basis, and also allows customers' individual business managers to supplement and redistribute cargo from offshore inventories in a real-time environment. This results in constant availability of product and reduction in cycle time to the beneficial consumer. See Attachment 1, Bolte Statement, pp. 2, 3.

At the heart of BDP's IT services to its customers are the following packages:

- **Customer Order Processing System (COPS).** BDP's Customer Order Processing System (COPS) has been designed to supplement customers' order processing systems by providing all functionality and data elements specific to the demands of international transportation and logistics. Information contained in the order transaction record can be used to produce documents required for order processing such as a quotation or a "proforma invoice," Order Acknowledgements, CARICOM and Canadian Customs Invoices, Certificates of Origin, and Packing Lists. The same transaction record may be used to produce

¹ An NVOCC is defined by Section 3(17)(B) of the Shipping Act of 1894, as amended 46 U.S.C. app. § 1702(17)(B). An NVOCC is "a common carrier ~~that~~ does not operate ~~or~~ own the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier."

Commission Invoices or Statements, Debit and Credit Memos, and Corrected Invoices.

- . **ECHO Warehouse System.** BDP's ECHO monitors the movement of cargo in transit and through any warehouse worldwide. ECHO gives BDP customers the ability to view and manage overseas inventories in a live, real-time environment. With ECHO, BDP customers can supplement and redistribute cargo from any point in the world through one centralized location. ECHO provides all necessary receipt and dispatch data, including packaging information, inventory and addresses. Dispatches are created with information from receipts by simple keystrokes instead of retyping. ECHO can also produce a variety of hard-copy forms, or send shipping notification to clients, carriers or other warehouses by electronic mail.
- . **RLF (Remote Location Filing.** RLF technology enables importers to electronically file all Customs clearance transactions for multiple ports of entry (in a paperless fashion) from one location. It allows importers of all sizes, but especially large importers, to expedite the clearance process with increased accuracy and efficiencies that lead to process cost savings. BDP's position as an industry leader in ED1 processing is evidenced by its partnership role with U.S. Customs in developing its RLF prototypes. See Attachment 1, Bolte Statement, p. 2,3,4.

The main thrust of this discussion, is obviously, that BDP as an OTI with vision and in keeping up with customer demands has evolved into a sophisticated logistics, transport provider.

2. BDP's Financial Position. BDP, a Pennsylvania corporation, was founded in 1966. BDP is an international, non-asset based supply chain management company that provides an array of logistical related services through an extensive global network of Branch offices and additional independent agent owed offices. Our services include air and ocean freight forwarding, custom brokerage, contract logistics, supply chain consulting and the coordination of customized management services. Our business operates in three geographic segments comprised of the Americas, Europe and Asia Pacific. BDP employs over 1100 employees worldwide. Among other things, BDP Interantioanal, Inc. is a licensed OTI and has been issued FMC No. 1127F for providing forwarding services. BDP Transport, LLC d/b/a Ocean Container Lines, has been issued License No. 16794N. It operates as a licensed OTI from its headquarters in Philadelphia, PA, as well as twenty other branches in the United States. BDP is also a U.S. licensed customhouse broker and IATA cargo agent. BDP utilizes all modes of transportation in arranging and managing single-source, door-to-door transportation solutions. See Attachment 1, Bolte Statement, p.4.

BDP is one of the largest privately owned third party logistics companies in North America. In providing integrated multi-modal services, BDP, as previously discussed, has developed several of the most sophisticated and effective IT systems which have become key in the delivery of integrated logistics services to its broad customer base, and in particular to the chemical industry. As noted above, in 2003, BDP had annual Gross Revenues approaching \$1.0 Billion and net revenue of \$83 million. This represents a 17% increase over prior year and further extends BDP's track record of consecutive years of double-digit net revenue growth. As previously noted, approximately 60% of BDP's

revenue is derived from providing services to the chemical industry. See Attachment 1, Bolte Statement, pp. 4, 5.

At the end of 2003, BDP reflects “Net Property and Equipment” on its Balance Sheet at \$21.5 million, with \$11.0 million being invested over the past three years. This property consists mainly of IT support equipment and property which principally is utilized in providing enhanced IT support to BDP’s extensive customer base through various of its transportation/logistics products. See above for a summary of BDP’s salient IT customer products, In addition BDP has invested \$5.6 million in its global network partnerships, BDP annually expends in R & D (systems and software), a range of 4 % to 6 % per year of net revenue in maintaining its competitive, propriety Information Technology capabilities. See Attachment 1, Bolte Statement, p. 5.

While continuously investing in Information Technology and its global network, BDP has maintained a relatively debt free Balance Sheet, with Long term debt of less than \$1.0 million and reflecting a favorable debt to equity ratio of .18, BDP is well positioned regarding term liquidity and compares favorable to an index of peer public companies. BDP remains in full compliance to all of its banking financial covenants, See Attachment 1, Bolte Statement, p. 5.

Everything considered, BDP is clearly a financially stable company by any measure.

B. THE CHANGED OCEAN SHIPPING ENVIRONMENT

It is important that an exemption be granted to BDP from the tariff publishing requirements of the Act, and as conditions to that exemption to permit BDP as a 3PL/NVOCC at its discretion to offer all inclusive contract arrangements to its

customers, This is especially true in light of industry developments since the enactment of OSRA. Industry conditions have changed significantly in that the shipping arena now includes significant new players, new services, and conditions not previously considered by Congress in the OSRA discussions.

This new environment includes a proliferation of 3PL logistics companies, such as BDP, with extensive capital investment in information technology, and corresponding skilled personnel, offering complex transportation/logistics solutions to shippers, which strategies include NVOCC transportation services as components of these solutions. This is a major departure from the types of NVOCC firms that were in business during the OSRA days, Another visible phenomena is the proliferation of logistics companies that are subsidiaries of VOCCs. These companies offer services to their customers that cannot be provided solely through their affiliated VOCCs. Therefore, they will seek to compete and will seek similar relief as BDP is herein requesting to service their customer base. This is a new environment with new players such as such as UPS, FEDEX, DHL, and others that are acquiring NVOCC components to their core business. These companies will also require freedom to contract with their customer base, as is evidenced by the numerous petitions tiled recently. There is a natural need to include confidential ocean components in the contractual arrangements that these companies enter with their customers.

However, the most important development that underscores the changes in the industry is the clamor by shippers of all sizes for one-stop shopping. In short, if the Exemption is granted, BDP would be able to address shippers' demands for a single confidential agreement covering all aspects of BDP's global transportation and supply

chain management services. In a single comprehensive contract, BDP could provide unique, customized service packages to each shipper, charging rates appropriate to the specific needs and traffic of the shipper, including the ocean components. Shippers are demanding confidential treatment of ocean rates. These cannot be achieved in a tariff-only context. Additionally, confidential service contracts with multiple components, including ocean rates and charges, result in customized packages of services at optimum pricing. These efficiencies would not be generally available in a public tariff context. Service contracts further give the parties flexibility in price adjustments as shipping conditions may change. Additionally, with a committed volume of cargo from shippers, BDP would be better situated to negotiate more favorable ocean rates and charges from ocean carriers. This would result in more competitive pricing to shippers. Id. at p.p. 5,6.

The proposed Exemption is consistent with the intent of Congress in enacting OSRA in 1998. Notwithstanding that Congress considered allowing service contract authority to NVOCCs as carriers during OSRA, they decided at that time to allow service contract authority only to VOCCs as carriers. However, as already noted herein, there have been substantial changes in industry conditions since the congressional deliberations in 1998. BDP, as well as other financially stable and competent OTIs, as will be discussed herein, do not fit the NVOCC “model” over which Congress expressed concerns. It is now truly a new and different environment from that which Congress considered during OSRA. The mechanism that Congress provided for just such changes in circumstances as described herein is the Exemption process of Section 16 of the Act.

As required by the Exemption provision in OSRA, the requested exemption, if granted, will not be detrimental to commerce, nor will it reduce competition. It will, in

fact, promote competition. And as stated, there is also substantial support for this exemption among shippers. Id. at pp. 6,7.

II. STATEMENT OF EXEMPTION REQUESTED

BDP requests the Commission to exempt it from the otherwise applicable tariff publishing requirements of Section 8 of the Act, to the extent necessary to permit BDP to selectively and in its discretion, offer its customers in contract format a confidential, individually tailored package of logistics services, that includes ocean transportation, If the exemption is granted, and to the extent that BDP exercises its discretion to enter confidential service contracts, BDP would comply with whatever reasonable conditions the Commission might set for oversight of these confidential transactions.

These might include simply requiring that the parties maintain copies of these confidential arrangements for a specified period subject to review by the Commission, in much the same way that the Commission provides for “special contracts” for freight forwarders at 46 CFR §515(33)(d), with the exception that these contracts would be confidential. Alternatively, the Commission might require compliance with the service contract provisions, or variations of those provisions contained in Section 8(c) of the Act, and all of the Commission’s rules governing service contracts in Part 530 of the Commission’s Rules (46 CFR Part 530).

If the exemption is granted, to the extent that BDP elects to not publish tariff rates and charges, and instead arranges transportation pursuant to a confidential arrangement, BDP would not be subject to the tariff publishing requirements of Sections 8(a) and 8(b) of the Act and the corresponding tariff publishing rules in Part 520 of the Commission’s Rules (46 CFR Part 520). In those cases in which ocean transportation provided by BDP

does not come under a confidential contract arrangement, BDP would remain subject to the applicable tariff publishing requirements of Section 8 and of the Commission's corresponding regulations. Approval of this exemption would place BDP in a similar, if not identical regulatory posture as the Act now imposes on VOCCs.

III. EXEMPTION WILL PROMOTE COMPETITION AND WILL NOT BE DETRIMENTAL TO COMMERCE

1. Granting of the Exemption Will Not be Detrimental to Commerce.

BDP's proposed exemption, if granted, not only to BDP, but also to other financially responsible NVOCCs as they might apply for an Exemption, would be beneficial to commerce and would increase competition. Confidential service contracts would result in better pricing opportunities for shippers in that BDP, with cargo volume obligations from its shippers, would be able to negotiate more favorable rates and terms with ocean carriers. This would result in BDP offering more competitive pricing and more advantageous service packages for shippers of all sizes. Id. at pp.7, 8, 9.

All the justifying rationale relating to the enhancement of commerce by the establishment of confidential service contracts that was considered by Congress in structuring OSRA would apply in the context being considered herein. Shippers would obtain exactly the same benefits, and therefore, it would **benefit** ocean commerce, in general, as was seen early in the implementation of OSRA. Shippers have without fail identified this potential development of entering confidential service contracts as beneficial to them and commerce in general. It is a foregone conclusion that confidential service contracts have created greater flexibility in pricing policy, and this would be equally true in this contractual context under consideration herein. The Commission in

its September, 2001 Study, “The Impact of the Shipping Reform Act of 1998” (“FMC OSRA Report”) concluded:

Overall, the responses reflect that confidentiality under OSRA has provided shippers and carriers with the privacy they deem necessary to freely transact business. With the ability to shield such information, the contracting process is not constrained by the previous standards of meeting benchmarks and matching terms identically. Commercially sensitive issues and business requirements can be discussed more freely and accommodated more easily with specific contract terms. Carriers and shippers are more focused on achieving their individual rate and business objectives through contract negotiations

See Id. p. 7, Attachment 1(FMC OSRA Report, at 33-34).

It clearly would be beneficial to ocean commerce for BDP to have the ability to provide contract terms for a myriad of services, including ocean transportation, as an all-inclusive source of obligating BDP, and shippers over the entire door-to-door route of a shipment. The structuring of complex logistics/transportation solutions in a tariff context, aside from the issue that it would not be confidential, would be strained, difficult, if not impossible. The efficiencies of confidential contracting for total transport packages are not currently possible, but are being promoted by shippers. Id. at p.p7, 8, 9.

2. Granting of the Exemption Will Not Substantially Reduce Competition.

Section 16 of the Shipping Act requires that the proposed exemption not be detrimental to commerce, but it also requires that granting of the Exemption not result in the substantial reduction of competition. The proposed BDP Exemption would meet this requirement by stimulating competition at many levels of the international transportation industry.

a. Carriers and Carrier-owned Logistics Companies. It is BDP’s expectation that the ocean carrier-owned logistics companies such as Maersk

Logistics, APL Logisitcs, Crowley Logistics, and others will be seeking similar treatment as BDP. Most of the major ocean carriers own a corresponding 3PL. These companies will be seeking the same treatment for basically the same reasons as BDP. These companies have the same requirement to offer integrated logistics/transportation services to their customers in confidential service contracts, As stated before, it is **BDP's** opinion, based on marketplace realities, that ocean carrier-owned logistics firms, operating as **NVOCCs** to provide the ocean component of their service, require the benefits of confidential service contracts, or some similar relief, as much as any other 3PL company. In reaching comprehensive global agreements with their customers, it is rarely the case that such contracts can be achieved with a single ocean carrier.

Therefore the real criterion in allowing carrier-owned logistics 3PL firms, or for that matter, any 3PL firms such as BDP, to enter confidential service contracts with shippers should not be the “vessels” that the parent owns/operates. As noted, these are minimally utilized by the logistics firm, but rather the true standard should be whether these firms, and their parents, are financially responsible. The query should be: “How will shippers fare in terms of risk exposure in dealing with these 3PL firms, regardless of their pedigree?” It is clear reality that carrier-owned 3PLs, or any other 3PL, will be implementing ocean services through the marketplace of vessels, and clearly not exclusively, nor even substantially, through those vessels owned or operated by their parent **VOCCs**. That is how this business works at this time. It is clear that concern should now be focused on whether the **NVOCCs/logistics** firms are: a) adding real value to their services, and b) whether they are financially stable in dealing with shippers in a

contract context. The ability of a carrier-owned 3PL company to offer services through its parent's vessels is of secondary importance in terms of service and pricing. Those days are long gone. In fact, it is a well known fact that most ocean carriers operate through chartered vessels which are not owned by them, and through slot charter arrangements with other VOCCs. What is important is whether the 3PL, and their "parents" are financially reliable. Id. at pp.7, 8, 9.

It, therefore, stands to reason that allowing 3PL companies, if they are otherwise financially stable, the ability to enter confidential service contracts as carriers, including those owned by ocean carriers, will increase rather than decrease competition. Increased competition would ensue among ocean carriers, their affiliated logistics firms, and financially responsible 3PL/transportation companies such as BDP. This, in effect, extends the market reach of those VOCCs owning logistics companies, but it also brings greater competition to bear as companies such as UPS, DHL, FEDEX, and BDP are allowed to participate in this competitive endeavor by offering confidential service contracts to its shippers for a myriad of services, including ocean transportation.

b. Other NVOCCs Offering Value-Added Services. The proposed Exemption would additionally have a salubrious effect on competition with respect to other NVOCCs, especially those already committed to adding value to their ocean transportation transactions. Id. at pp. 10-11. As noted above, there are a myriad of services that logistics/transportation companies provide to shippers, including ocean transport, under one umbrella. There are currently many NVOCCs that have made serious infrastructure and personnel investments, especially in the IT areas, that would be interested in pursuing, and we are sure

will pursue, the same confidential service contract remedy that is being sought by BDP and UPS. Id. at p.8. These financially stable and forward-looking OTI organizations, based in the United States and outside the United States, also are seeking and competing by expanding the range of services offered to their customers, BDP believes that many of these companies are deserving of the same treatment being sought by BDP and UPS, provided that they can demonstrate appropriate financial stability. In any case, these companies will be competing as fiercely as ever as these industries develop and become ever more sophisticated in the delivery of value-added services to shippers.

Also, one might easily conclude, that, in fact, if anything, granting of this exemption to BDP would promote competition within all NVOCCs, even those not currently committed to value added services by motivating some of these firms to enter into the new arena of logistics transport, and the conclusion that value added services are worth pursuing. In any case, there is no indication of any substantial reduction of competition from any group of NVOCCs if this Petition is granted to BDP and others. Id. at p.9.

In conclusion, granting of this Exemption Petition by the Commission would not result in either the reduction of competition nor would it be detrimental to commerce.

IV. OSRA'S LEGISLATIVE HISTORY SUPPORTS THE COMMISSION'S AUTHORITY TO GRANT THE EXEMPTION

A. THE CHANGED COMMERCIAL ENVIRONMENT

As already provided herein, the transportation/business environment that exists today is radically different from what it was when Congress enacted OSRA. OSRA's

legislative history shows that Congress' decision not to allow OTI's to offer service contracts was based on its perception of the 1998 transportation environment that is totally alien from the one in which BDP operates in 2003. BDP provides its customers with a large, well financed and efficiently managed OTI operation that reflects the paradigm shift that has occurred in the logistics sector during the past five years. Today, such traditional vessel operators as Maersk-Sea-Land, and APL have their own 3PL/NVO operations, Large and mid-size U.S. manufacturing companies are increasingly relying on 3PL companies such as BDP. The identity of the companies themselves has also changed. The NVO world today includes such giant transportation entities as FedEx, UPS, DHL, Airborne, Deutsche Post, Deutsche Bahn, as well as large consolidators of LCL cargo such as Shipco, NACA Logistics and CaroTrans.

In 1998, Congress focused its consideration of service contract authority on distinctions between vessel operators and NVOCCs. The distinctions Congress looked at involved disparities in capital invested and services rendered.' These disparities are demonstrably inapplicable to BDP, and other companies. As discussed above, BDP performs a whole list of supply chain management services for its customers that were never the province of the traditional NVOCC that Congress looked at in 1998. When Congress was considering OSRA, transportation, like nearly every other industry, was rapidly evolving toward a service-based IT business model. Capital investment is no longer focused primarily on vessels, trucks and planes. Today, the focus has expanded to include significant investment in the information technology systems demanded by

² "Yet the Gorton amendment (to permit OTI's to offer service contracts) would basically accord these intermediary companies, who actually do not perform any transportation function itself, the same contractual rights that an ocean carrier enjoys, without any of the expense, without any of the liability,

shippers. BDP currently carries approximately \$21.5 million in net property and equipment on its balance sheet. In short, unlike the earlier generation of “paper” NVOCCs, BDP **does** incur a significant expense in equipment and skilled personnel; it *does* accept the liability for the total transportation/logistics activities; and, it *does* bear the door-to-door commercial and legal responsibility for the transportation/logistics services it provides. There has been a definite **shift** of how business is conducted **from** 1998 to now.

As discussed below, Congress recognized the evolutionary forces at work and retained the Commission’s authority to grant exemptions **from** “any requirement” of the Act. See 46 U.S.C. app. §1715. However, while Congress continued the Commission’s authority to grant exemptions, Congress amended Section 16 of the 1984 Act to eliminate two of the four standards that previously applied to granting exemptions. Specifically, Congress eliminated the standard that previously prohibited exemptions for activities that impaired Commission regulation, but retained prohibitions against substantial reductions in competition and detriment to **commerce**³ See 46 U.S.C. app. §1715. These changes demonstrate Congress’ overall intent to reduce regulation, increase competition, and promote commerce.

As discussed above, granting the exemption requested by BDP will not reduce competition and it will actually benefit commerce by allowing BDP, and others, to develop innovative service contract features that its customers are looking for, while it continues to expand its existing customer services.

without any of the responsibility. That is simply not right, **and** it is not correct.” 144 Cong. Rec. S3307 (daily ed. April 21, 1998) (statement by Senator **Breaux**).

Finally, the statement that Congress chose not to allow OTIs to offer service contracts tells only half the story. It misses the underlying deregulatory and pro-commerce purposes behind OSRA. It is not only the NVOs that are denied the right to offer contracts to their shippers, it is also denied to their customers, U.S. importers and exporters. These customers are currently being denied the right to enter comprehensive contracts, to include ocean transport, with large, financially stable 3PLs like BDP, upon which shippers have increasingly come to rely. BDP's petition seeks by this Petition to align the regulatory infrastructure to which it is subject with the commercial environment in which it and its customers now find themselves

B. THE COMMISSION'S EXEMPTION AUTHORITY

The Commission's exemption authority allows it to:

exempt for the future .any specified activity of those persons (subject to this chapter) from any requirement of this chapter if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption. No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States

46 U.S.C. app. §1715.

Two things demonstrate that in 1998, Congress' understood that if conditions changed after OSRA was enacted, it might become appropriate to allow OTIs to offer service contracts to their customers, and, if so, that Congress intended the FMC to use its exemption authority to bring this about

³ Congress also eliminated the "unjustly discriminatory" test, which is consistent with the whole statutory approach taken towards service contracts, which are. inherently discriminatory, especially in a confidential environment

First, when Congress amended Section 10 of the Shipping Act of 1984, 46 U.S.C. app. 51709, it chose not to include a specific prohibition against service contracts between OTIs and their customers. Considering that Section 10 lists some twenty nine (29) separate prohibitions, the absence of any specifically enumerated prohibition against OTI service contracts must be taken as Congressional acknowledgment that 1) such contracts do not, per se, violate Congressional policy and that 2) in a commercial environment different from that which existed in 1998, the selective exemption of tariff publishing by NVOCCs, and a corresponding NVO-shipper contract could be pro-competitive and beneficial to U.S. commerce.

Second, the legislative history of the OSRA amendment to the Commission's exemption authority under Section 16 of the Shipping Act of 1984, 46 U.S.C. app §1715, states that its underlying policy is that “. .the FMC is more capable of examining through the administrative process specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress.” S. Rep. No. 105-61 at 30 (1997).

Taken together, these two considerations show that Congress gave the Commission all of the authority it needs to grant BDP's petition. It is clear that Congress during the OSRA dialogues could not address conditions and practices that were not then prevalent as they are now. It is now up to the FMC, as Congress acknowledged, as more “capable through the administrative process to determine where they [regulatory provisions] can be deregulated consistent with the policies of Congress.” Id.

This is the perfect opportunity for the Commission to exercise this discretionary authority that will benefit all responsible segments of the ocean shipping industry.

V. THE EXEMPTION CRITERIA

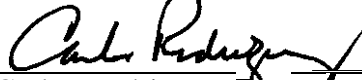
It is BDP's belief that this Exemption should be made available to BDP, and to the NVO community on a case-by-case basis to those NVOCCs which evince the qualities that we believe Congress was suggesting as lacking in the legislative history of OSRA. This is an opportunity for the Commission to raise the level of professionalism in this important industry while increasing competition, and enhancing ocean commerce in general. In this respect, we **respectfully** suggest that the Commission consider granting similar exemptions to NVOCCs, that demonstrate, as BDP has, the following: a) that the NVOCC is substantially committed to providing value-added services to its customers, and that the confidential contract format is best suited for those transactions than public electronic tariffs; b) that the NVOCC has demonstrated a history of financial stability; and c) that the NVOCC has historically conformed with the Commission regulations.

VI. CONCLUSION

For the foregoing reasons, BDP submits that it is within the Commission's power to grant the requested exemption to exempt it from the tariff publishing requirements of Section 8 of the Act. Further BDP acknowledges that for those shipments for which BDP chooses to provide contractual services, and to be exempted from the tariff publishing requirements of the Act, that the Commission would impose conditions as permitted by Section 16 of the Act, that would require BDP and its customer(s) to set forth their shipping agreement(s) in confidential service contract format, or in any other format mandated by the Commission, or pursuant to any other conditions which the Commission would deem appropriate consistent with this petition. BDP submits that granting its

mandated by the Commission, or pursuant to any other conditions which the Commission would deem appropriate consistent with this petition, BDP submits that granting its petition will affirmatively benefit U.S. commerce and increase competition, Therefore, BDP respectfully requests that the Commission approve the Petition.

Respectfully submitted.



Carlos Rodriguez, Esq.
Rodriguez O'Donnell Ross
Fuerst Gonzalez & Williams
1211 Connecticut Ave. N.W., Suite 800
Washington, D.C. 20036
(202) 973-2999

Counsel for Petitioner

Catherine Muldoon, Esq.
General Counsel for Petitioner
BDP International, Inc.
510 Walnut St.
Philadelphia, PA 19106
(215-629-8297)

January 20, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of January, 2004, served a copy of foregoing Petition of BDP International, Inc., upon the party, named herein, by causing an original and fifteen copies thereof to be hand delivered to the following:

Mr. Bryant L. VanBrakle
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W
Room No. 1046
Washington, D.C. 20573

A handwritten signature in black ink, appearing to read "Eddie L. Edwards", written over a horizontal line.

Mr. Eddie L. Edwards
RODRIGUEZ O'DONNELL ROSS
FUERST GONZALEZ & WILLIAMS, P.C.
1211 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 293-3300 (Telephone)
(202) 293-3307 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of January, 2004, served a copy of foregoing Petition of BDP International, Inc., upon the party, named herein, by causing an original and fifteen copies thereof to be hand delivered to the following:

Mr. Bryant L. VanBrakle
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Room No. 1046
Washington, D.C. 20573

A handwritten signature in black ink, appearing to read "Eddie Edwards", written over a horizontal line.

Mr. Eddie L. Edwards
RODRIGUEZ O'DONNELL ROSS
FUERST GONZALEZ & WILLIAMS, P.C.
12 11 Connecticut Avenue, N. W.
Suite 800
Washington, DC 20036
(202) 293-3300 (Telephone)
(202) 293-3307 (Facsimile)

ATTACHMENT – A

**VERIFIED STATEMENT OF MR. RICHARD J. BOLTE, JR
PRESIDENT, BDP INTERNATIONAL, INC.**

VERIFIED STATEMENT OF RICHARD J. BOLTE, JR.

My name is Richard J. Bolte, Jr. I joined BDP International, Inc. in 1973. (Hereinafter BDP and its subsidiaries shall be referred to as "BDP"). During my 25-year career with the company I have held positions covering a broad range of the firm's operations in global logistics and transportation. I am currently the President of BDP with its headquarters located at 510 Walnut Street Philadelphia, PA 19106. I have held the position of President since 1996. Previous to that I was Vice President for the company's Northeast Region before taking the position of Chief Operating Officer, and then President. As President, my duties include all aspects of BDP's air, ocean, surface, intermodal, and logistics products in the United States and abroad related to international transactions. The statements made herein are made either because I have first hand knowledge of those facts; they are facts that come under my official duties as President; or, I have otherwise ascertained that they are true.

1. BDP's Integrated Logistics/Transport Operations. Today, BDP is one of the largest privately owned global logistics companies in the United States, Headquartered in Philadelphia, the company has more than 20 offices across the United States and a network of joint venture associates in over 100 countries worldwide. BDP's annual gross revenues in 2003 approaches \$1 .0 billion, with net revenue of \$83.0 million. 60% of these sales, by revenue, represent services to the chemicals industry. BDP manages the movement and processing of approximately 65% of U.S. chemical exports (containerized). It coordinates over 300,000 TEU'S, and some 310,000 transactions of chemical shipments annually. In 1997 BDP was awarded The President's E-Award for Excellence in Exporting, the highest U.S. award for American exporters. BDP employs over 1300 employees.

BDP Transport, LLC, a wholly-owned affiliate of BDP International, Inc., is a non-vessel operating common carrier ("NVOCC"). BDP transports substantial volumes of freight that move via all modes of transportation, including by vessel-operating common carriers ("VOCCs"). A substantial amount of this ocean cargo also moves, and is handled and integrated in connection with BDP's other transportation activities and modes-i.e., air and surface, intermodal, IT services, warehousing, and logistics, among others.

BDP provides a full range of supply chain management solutions and services for more than 4,000 customers worldwide. These shippers depend on BDP for transportation services in all modes of transportation as well as for intermodal and full-service global supply chain management solutions. BDP assists shippers to solve their supply chain problems, and to develop and implement distribution strategies that help shippers meet their short and long-term goals. BDP provides value added services that supplement shippers' supply chain management plans. These value-added transportation management services include BDP's Logistics Process Analysis. This is an executive resource, which helps global shippers analyze, develop and implement successful logistics management strategies.

BDP's portfolio of integrated services for warehousing and distribution solutions for its customers is yet another value added service which it offers both its U.S. and international clients. BDP operates many warehouses on behalf of its global partners. Throughout its U.S. based and global operations, BDP continually helps clients identify reductions in redistribution costs, transportation and handling fees. BDP's completely integrated approach of its ECHO inventory management system provides control on a worldwide basis, and also allows customers' individual business managers to supplement and redistribute cargo from offshore inventories in a real-time environment. This results in constant availability of product and reduction in cycle time

to the beneficial consumer. At the heart of BDP's IT services to its customers are the following packages:

• **Customer Order Processing System (COPS).** BDP's Customer Order Processing System (COPS) has been designed to supplement customers' order processing systems by providing all functionality and data elements specific to the demands of international transportation and logistics. Information contained in the order transaction record can be used to produce documents required for order processing such as a quotation or a "proforma invoice", Order Acknowledgements, CARICOM and Canadian Customs Invoices, Certificates of Origin, and Packing Lists. The same transaction record may be used to produce Commission Invoices or Statements, Debit and Credit Memos, and Corrected Invoices.

• **ECHO Warehouse System.** BDP's ECHO monitors the movement of cargo in transit and through any warehouse worldwide. ECHO gives BDP customers the ability to view and manage overseas inventories in a live, real-time environment. With ECHO, BDP customers can supplement and redistribute cargo from any point in the world through one centralized location. ECHO provides all necessary receipt and dispatch data, including packaging information, inventory and addresses. Dispatches are created with information from receipts by simple keystrokes instead of retyping. ECHO can also produce a variety of hard-copy forms, or send shipping notification to clients, carriers or other warehouses by electronic mail.

• **Remote Location Filing ("RFL").** RLF technology enables importers to electronically file all Customs clearance transactions for multiple ports of entry (in a paperless fashion) from one location. It allows importers of all sizes, but especially large importers, to expedite the clearance process with increased accuracy and efficiencies that lead to process cost savings.

BDP's position as an industry leader in EDI processing is evidenced by its partnership role with U.S. Customs in developing its RLF prototypes.

2. BDP's Financial Position. BDP, a Pennsylvania corporation, was founded in 1966. BDP is an international, non-asset based supply chain management company that provides an array of logistical related services through an extensive global network of Branch offices and additional independent agent owned offices. Our services include air and ocean freight forwarding, custom brokerage, contract logistics, supply chain consulting and the coordination of customized management services. Its business operates in three geographic segments comprised of the Americas, Europe and Asia Pacific. BDP employs over 1,300 employees worldwide. Among other things, BDP International, Inc. is a licensed OTI and has been issued FMC No.1127F for providing forwarding services. BDP Transport, LLC d/b/a Ocean Container Lines, has been issued License No. 16794N. It operates as a licensed OTI from its headquarters in Philadelphia, PA, as well as twenty other branches in the United States. BDP is also a U.S. licensed customhouse broker and IATA cargo agent. BDP utilizes all modes of transportation in arranging and managing single-source, door-to-door transportation solutions.

BDP is one of the largest privately owned third party logistics companies in North America. In providing integrated multi-modal services, BDP, as previously discussed, has developed several of the most sophisticated and effective IT systems which have become key in the delivery of integrated logistics services to its broad customer base, and in particular to the chemical industry. As noted above, in 2003, BDP had **annual** Gross Revenues approaching \$1.0 Billion and net revenue of \$83 million. This represents a 17% increase over prior year and further extends BDP's track record of consecutive years of double-digit net revenue growth. As

previously noted, approximately 60% of BDP's revenue is derived from providing services to the chemical industry.

At the end of 2003, BDP reflects "Net Property and Equipment" on its Balance Sheet at \$21.5 million, with \$11.0 million being invested over the past three years. This property consists mainly of IT support equipment and property which principally is utilized in providing enhanced IT support to BDP's extensive customer base through various of its transportation/logistics products. See above for a summary of BDP's salient IT customer products. In addition BDP has invested \$5.6 million in its global network partnerships. BDP annually expends in R & D (systems and software), a range of 4 % to 6 % per year of net revenue in maintaining its competitive, propriety Information Technology capabilities.

While continuously investing in Information Technology and its global network, BDP has maintained a relatively debt free Balance Sheet, with Long term debt of less than \$1.0 million and reflecting a favorable debt to equity ratio of .18, BDP is well positioned regarding term liquidity and compares favorable to an index of peer public companies. BDP remains in full compliance to all of its banking financial covenants.

Everything considered, BDP is clearly a financially stable company by any measure.

3. Changes in the Shipping Environment. While there have been many noticeable changes in the shipping environment since Congress considered changing the Shipping Act, the most important development which underscores the changes in the industry is the clamor by shippers of all sizes for one-stop shopping. In short, if the Exemption is granted, BDP would be able to address shippers' demands for a single confidential agreement covering all aspects of BDP's global transportation and supply chain management services. In a single comprehensive

contract, BDP could provide unique, customized service packages to each shipper, charging rates appropriate to the specific needs and traffic of the shipper, including the ocean components. Shippers are demanding confidential treatment of ocean rates. These cannot be achieved in a tariff-only context. Additionally, confidential service contracts with multiple components, including ocean rates and charges, result in customized packages of services at optimum pricing. These efficiencies would not be generally available in a public tariff context. Service contracts further give the parties flexibility in price adjustments as shipping conditions may change. Additionally, with a committed volume of cargo from shippers, BDP would be better situated to negotiate more favorable ocean rates and charges from ocean carriers. This would result in more competitive pricing to shippers. Shippers are fully supportive of this Petition.

4. Granting of the Exemption Will Not be Detrimental to Commerce.

BDP's proposed exemption would be beneficial to commerce and would increase competition. Confidential service contracts would result in better pricing opportunities for shippers in that BDP, with cargo volume obligations from its shippers, would be able to negotiate more favorable rates and terms with ocean carriers. This would result in BDP offering more competitive pricing and more advantageous service packages for shippers of all sizes.

All the justifying rationale relating to the enhancement of commerce by the establishment of confidential service contracts that was considered by Congress in structuring OSRA would apply in the context being considered herein. Shippers would obtain exactly the same benefits, and therefore, it would benefit ocean commerce, in general, as was seen early in the implementation of OSRA. Shippers have without fail identified this potential development of entering confidential service contracts as beneficial to them and commerce in general. It is a foregone conclusion that confidential service contracts have created greater flexibility in pricing policy,

and this would be equally true in this contractual context under consideration herein. See Attachment 1 (FMC OSRA Report, at 33-34).

5. Granting of the Exemption Will Not Substantially Reduce Competition.

a. Carriers and Carrier-owned Logistics Companies. It is BDP's expectation that the ocean carrier-owned logistics companies such as Maersk Logistics, APL Logistics, Crowley Logistics, and others will be seeking similar treatment as BDP. Most of the major ocean carriers own a corresponding 3PL. These companies will be seeking the same treatment for basically the same reasons as BDP. These companies have the same requirement to offer integrated logistics/transportation services to their customers in confidential service contracts. As stated before, it is BDP's opinion, based on marketplace realities, that ocean carrier-owned logistics firms, operating as NVOCCs to provide the ocean component of their service, require the benefits of confidential service contracts, or some similar relief, as much as any other 3PL company. In reaching comprehensive global agreements with their customers, it is rarely the case that such contracts can be achieved with a single ocean carrier.

Therefore the real criterion in allowing carrier-owned logistics 3PL firms, or for that matter, any 3PL firms such as BDP, to enter confidential service contracts with shippers should not be the "vessels" that the parent owns/operates. As noted, these are minimally utilized by the logistics firm, but rather the true standard should be whether these firms, and their parents, are financially responsible. The query should be: "How will shippers fare in terms of risk exposure in dealing with these 3PL firms, regardless of their pedigree?" It is clear reality that carrier-owned 3PLs, or any other 3PL, will be implementing ocean services through the marketplace of vessels, and clearly not exclusively, nor even substantially, through those vessels owned or operated by their parent VOCCs. That is how this business works at this time. It is clear that

concern should now be focused on whether the NVOCCs/logistics firms are: a) adding real value to their services, and b) whether they are financially stable in dealing with shippers in a contract context. The ability of a carrier-owned 3PL company to offer services through its parent's vessels is of secondary importance in terms of service and pricing. Those days are long gone. In fact, it is a well known fact that most ocean carriers operate through chartered vessels which are not owned by them, and through slot charter arrangements with other VOCCs. What is important is whether the 3PL, and their "parents" are financially reliable.

b. Other NVOCCs Offering Value-Added Services. The proposed Exemption would additionally have a salubrious effect on competition with respect to other NVOCCs, especially those already committed to adding value to their ocean transportation transactions. As noted above, there are a myriad of services that logistics/transportation companies provide to shippers, including ocean transport, under one umbrella. There are currently many NVOCCs that have made serious infrastructure and personnel investments, especially in the IT areas, that would be interested in pursuing, and we are sure will pursue, the same confidential service contract remedy that is being sought by BDP and UPS. These financially stable and forward-looking OTI organizations, based in the United States and outside the United States, also are seeking and competing by expanding the range of services offered to their customers. BDP believes that many of these companies are deserving of the same treatment being sought by BDP and UPS, provided that they can demonstrate appropriate financial stability. In any case, these companies will be competing as fiercely as ever as these industries develop and become ever more sophisticated in the delivery of value-added services to shippers.

It is my opinion that if anything, granting of this exemption to BDP would promote competition within all NVOCCs, even those not currently committed to value added services by

motivating some of these firms to enter into the new arena of logistics transport, and the conclusion that value added services are worth pursuing. In any case, there is no indication of any substantial reduction of competition from any group of NVOCCs if this Petition is granted to BDP and others.

Conclusion

For the reasons stated above, BDP believes the requested service contract authority exemption is justified under Section 16 of the Act and should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. J. Bolte', is written over a horizontal line.

Richard J. Bolte
President,
BDP International, Inc.

Dated: January 16, 2004

VERIFICATION

In accordance with the Federal Maritime Commission's regulations at 46 C.F.R. §502.112(c)(2), I hereby verify under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'R. J. Bolte', is written over a horizontal line.

Richard J. Bolte
President,
BDP International, Inc.

Dated: January 16, 2004